

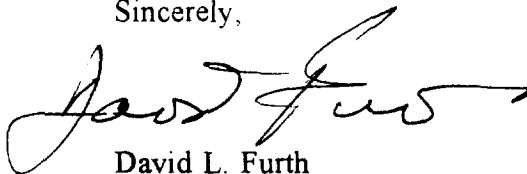
The Honorable Virgil H. Goode

2.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a stylized flourish at the end.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

VIRGIL H. GOODE, JR.  
5TH DISTRICT, VIRGINIA

**Congress of the United States**

**House of Representatives**

**Washington, DC 20515-4605**

December 16, 1997

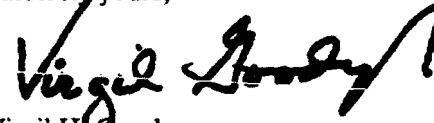
WTB  
97-182  
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The Honorable William Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554-0001

Dear Mr. Kennard:

I have communicated with your office previously about my concern and the concern of many jurisdictions of the Fifth District with regard to the proposed FCC rule preempting local zoning and land use restrictions in connection with broadcast station transmission facilities. Mr. Rolfe in his letter to you dated December 11, 1997, makes some very good points, and I hope that you will show them every consideration as you evaluate this proposal.

Sincerely yours,

  
Virgil H. Goode

VHGjr/dcl

cc: Mr. William C. Rolfe



# Bedford County

OFFICE OF THE COUNTY ADMINISTRATOR

December 11, 1997

The Honorable Virgil H. Goode, Jr.  
1520 Longworth HOB  
Washington, DC 20515

Dear Representative Goode:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violated the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violated

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The Honorable Virgil H. Goode, Jr.  
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local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! An all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man--over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazine state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from any members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



William C. Rolfe  
County Administrator

cc: See attached list